

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
ROCK HILL DIVISION

Rodney Lamark McGill,)	C/A NO. 0:05-821-CMC
)	CR. NO. 0:99-659
Petitioner,)	
)	OPINION and ORDER
v.)	
)	
United States of America,)	
)	
Respondent.)	
_____)	

Petitioner is a *pro se* federal inmate who seeks relief in this court pursuant to 28 U.S.C. § 2255. On November 18, 2005, this court ordered summary judgment be granted to Respondent on all of Petitioner's claims except Petitioner's allegation of appellate counsel's alleged refusal to assist him in filing a petition for writ of certiorari to the United States Supreme Court. On January 25, 2006, this court granted summary judgment to Respondent on the remaining issue. Judgment was entered January 26, 2006. Petitioner has filed a motion for reconsideration, accompanied by a Notice of Appeal to the Fourth Circuit Court of Appeals.

Much of Petitioner's reconsideration motion re-argues the same issues raised in his § 2255 motion. These arguments were considered and rejected by this court in its two orders. Petitioner's motion for reconsideration raises no legally relevant argument.¹

¹Petitioner asserts that this court's order of January 25, 2006 is in contravention of Supreme Court precedent in *United States v. Wilkins*, 441 U.S. 468 (1979). However, the more correct Supreme Court precedent is found in *Austin v. United States*, 513 U.S. 5 (1994), a case cited in this court's January 25 order and seemingly ignored by Petitioner. As noted in this court's January 25, 2006 order, *Austin* holds that if counsel feels a petitioner's requested certiorari petition is frivolous, counsel should be given the opportunity to withdraw from representation prior to filing any petition with the United States Supreme Court. *See Austin*, 513 U.S. at 8. Therefore, appointed counsel is no longer required to file a petition for writ of certiorari if he believes such a petition would be frivolous.

Petitioner's motion for reconsideration is **denied**.

IT IS SO ORDERED.

s/ Cameron McGowan Currie
CAMERON MCGOWAN CURRIE
UNITED STATES DISTRICT JUDGE

Columbia, South Carolina
February 14, 2006

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